

AMENDED IN ASSEMBLY APRIL 20, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1422

Introduced by Assembly Member Bogh

February 22, 2005

An act to add Section 1418.95 to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1422, as amended, Bogh. Long-term health care facilities: sexual offenders.

Existing law provides for the licensing and regulation of health facilities by, with certain exceptions, the State Department of Health Services. Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, requires the department to adopt regulations to establish a licensing, inspection, reporting, and citation system to ensure quality care in long-term health care facilities. Violation of these provisions is a crime.

Existing law requires that persons *a person* convicted of prescribed sexual crimes to register with the chief of police of the city, or the sheriff of the county, in which ~~he or she~~ *the person* is residing.

This bill would require that a person required to register as a sex offender ~~be presumed to be a threat to the residents of a long-term health care facility and by~~ *notify a long-term health care facility of the person's sex offender status prior to or at the time of admission.* By changing the definition of a crime, *this bill* would impose a state-mandated local program. The bill would authorize a facility to *transfer, discharge, or deny admission to the person* ~~and would authorize the facility to admit the person if it unless the administrator makes prescribed findings to overcome the presumption or if it finds~~

~~that it is staffed to handle the threat that the facility is adequately staffed to protect current residents and staff from any potential threat. The bill would allow a resident who is transferred or discharged to appeal the decision to the department. If the department denies the transfer or discharge, and the resident harms a resident or staff at the facility, the bill would allow the state to be held liable for any negligence in the determination to deny the transfer or discharge, in addition to any liability the facility may incur.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1418.95 is added to the Health and
- 2 Safety Code, immediately following Section 1418.91, to read:
- 3 1418.95. (a) ~~A resident of~~ *An applicant for admission to a*
- 4 *long-term health care facility who has committed an offense that*
- 5 *requires the resident to register pursuant to Section 290 of the*
- 6 *Penal Code shall, for the purposes of this section, be presumed*
- 7 *by the* ~~notify the facility of the applicant's status prior to or at~~
- 8 *the time of admission. The administrator of the facility to present*
- 9 *shall use this information only to screen the potential resident to*
- 10 *determine whether the resident presents a threat to the health,*
- 11 *safety, and welfare of the residents or staff at the facility.*
- 12 (b) ~~The presumption in subdivision (a) may be overcome by~~ *In*
- 13 *making the determination required in subdivision (a), the*
- 14 *administrator shall rely on information obtained through the*
- 15 *facility's assessment of the resident and a determination by both*
- 16 *the resident's attending physician and the facility's*
- 17 *interdisciplinary team that the facility is capable of taking proper*
- 18 *care of the resident and protecting the health, safety, and welfare*
- 19 *of the other residents and staff at the facility.*
- 20 (c) ~~Until a facility the administrator determines that the~~
- 21 *facility is adequately staffed to protect current residents from the*

1 ~~threat or until the presumption is overcome pursuant to~~
2 ~~subdivision (b) and staff from any potential threat~~, a facility may
3 deny admission to any potential resident who is required to
4 register under Section 290 of the Penal Code, *to protect persons*
5 *at risk.*

6 (d) A facility may *transfer or* discharge any resident as soon
7 as practicable, but not less than 15 days, after obtaining
8 information that the resident has committed an offense which
9 requires the resident to register pursuant to Section 290 of the
10 Penal Code *and the administrator reasonably determines that the*
11 *health and safety of other residents is at risk.*

12 (e) *A resident who is transferred or discharged pursuant to*
13 *subdivision (d) shall have a right to appeal to the department's*
14 *administrative hearings and appeals unit. If the department*
15 *denies the transfer or discharge and requires that the resident*
16 *remain in or return to the facility, and the resident later harms*
17 *any other resident or staff at the facility, the state,*
18 *notwithstanding any contrary provision of existing law, may be*
19 *liable for any negligence in their determination to deny the*
20 *transfer or discharge that allowed the resident to remain in or*
21 *return to the facility, which shall be in addition to any liability*
22 *the facility may incur.*

23 SEC. 2. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the
28 penalty for a crime or infraction, within the meaning of Section
29 17556 of the Government Code, or changes the definition of a
30 crime within the meaning of Section 6 of Article XIII B of the
31 California Constitution.